

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 23-cr-01423-KG

MICHAEL DAVID FOX,

Defendant.

**OPPOSED MOTION TO MODIFY PRETRIAL CONDITIONS OF RELEASE**

MICHAEL DAVID FOX, through his attorney, Daniel Rubin, moves this Court to modify his Pretrial Conditions of Release as soon as possible. Specifically, he requests that he be allowed to reside at his mother's home in Tucson, Arizona. To the extent this takes more than one week for USPO to receive approval from pretrial in Arizona, Mr. Fox requests to move to his trailer at the KOA campground in Las Cruces, New Mexico in the interim. An explanation for the request for expediency is below.

Mr. Fox was ordered released at his detention hearing on June 7, 2023. Doc. 16. At the detention hearing Judge Fouratt stated that if Mr. Fox was perfectly compliant with his conditions that he would reconsider release to Mr. Fox's trailer after 60 or 90 days. Judge Fouratt did not agree to release him to the trailer at that point but mentioned he would have more information about Mr. Fox in order to consider releasing him to the trailer.

After being ordered released on June 7, 2023, Mr. Fox needed to wait for a bed to open at Diersen. A bed opened on July 25, 2023, and he was then released to Diersen then. Doc. 18. It is Mr. Rubin's understanding that Mr. Fox has not had any pretrial violations nor any write-ups at Diersen.

Mr. Fox pleaded guilty on September 20, 2023. Doc. 28. At that time Mr. Rubin mentioned to Judge Martinez that he would be requesting to have Mr. Fox's conditions modified to change his residence.

Mr. Fox has been at Diersen for 100 days. He is ready to move on from Diersen. His mother's home in Tucson, at an over-55 living residence, would be ideal. Mr. Fox believes he would be able to find work there. He would also like to rekindle his relationship with his mother, Heather Davis. Ms. Davis, in turn, would like to have her son live with her. Mr. Rubin understands that Ms. Davis has no criminal history and would surely be seen to be a suitable release address as well as a suitable third-party custodian. Mr. Rubin has provided USPO with Ms. Davis's contact information including telephone number, email address and residential address.

To the extent that Ms. Davis and her home take more than a week for USPO to vet and approve, Mr. Fox does not wish to linger at Diersen while waiting for such longer approval. Instead, he has a trailer, at the KOA campground in Las Cruces, where he has been paying significant rent since the day he was arrested. He would like to return there while waiting for approval for his mother's home in Tucson, again, if his mother's home will take more than a week to get approved.

Regarding Mr. Rubin's request to have Mr. Fox's pretrial conditions modified as soon as possible, Mr. Rubin alerted USPO in the middle of September that Mr. Rubin would like Mr. Fox to change residences if the Court allowed it. At first Mr. Rubin was asking to have Mr. Fox moved to Arizona but was told by Senior USPO Raul Magallanes-Escorza on October 13<sup>th</sup> that Tucson USPO requested a psych evaluation. To date, no psych evaluation has occurred.

Mr. Fox has been volunteering at Gospel Rescue Mission for months. He is the most dedicated volunteer that Mr. Rubin has seen during his time as an AFPD. He has volunteered well

over 300 hours. Mr. Fox has two places where he can release to and has had these available for several months. To Mr. Rubin's knowledge, Mr. Fox has no violations of his pretrial conditions and no write-ups at Diersen. It is understandable, in fact it is normal, that Mr. Fox would like to move on from a halfway house.

Ms. Fox has been contacted and is in favor of the proposed modification.

Senior USPO Raul Magallanes-Escorza has been contacted and opposes the proposed modification. To the extent that USPO Raul Magallanes-Escorza wishes to respond to this motion, Mr. Rubin hopes he will do so at his earliest convenience. Alternatively, Mr. Rubin requests the Court set a hearing on this at the Court's earliest convenience so that all parties can be heard.

AUSA Lindy Carpenter has been contacted and is opposed to the proposed modification. To the extent that AUSA Carpenter wishes to respond to this motion, Mr. Rubin hopes she will do so at her earliest convenience. Alternatively, Mr. Rubin requests the Court set a hearing on this at the Court's earliest convenience so that all parties can be heard.

Mr. Rubin is unavailable for an in-person hearing from November 13 until November 24<sup>th</sup>, but he will be available via email and telephone during this time, albeit with a time zone related delay in responses. He is available for an in-person hearing before November 13<sup>th</sup> and after November 24<sup>th</sup>.

Respectfully submitted,

FEDERAL PUBLIC DEFENDER  
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*Electronically filed (November 2, 2023)*

By: /s/ Daniel Rubin

Daniel Rubin

Assistant Federal Public Defender